

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

KAREEM MURRAY,

Petitioner,

vs.

JOSEPH H. NOETH, Superintendent,
Attica Correctional Facility,

Respondent.

No. 9:19-cv-00224-JKS

ORDER

[Re: Motion at Docket No. 39]

This Court denied the Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by Kareem Murray, a New York state prisoner proceeding *pro se*, on August 19, 2020. Docket Nos. 30, 31. The Court, however, issued a certificate of appealability solely with respect to Murray's claim that the trial court erred when it ruled that defense counsel purposefully discriminated against male jurors (Ground 3). Respondent subsequently moved to alter the judgment and requested that the Court deny a certificate of appealability in its entirety. Docket No. 32. The Court denied Respondent's motion and also denied a certificate of appealability as to that motion. Docket No.34.

At Docket No. 39, Murray filed a submission entitled "Application for Certificate of Appealability." In that application, Murray asks the Court to "re-grant a certificate of appealability solely with respect" to Ground 3. Docket No. 39 at 3. Such action is not necessary, however, because the certificate of appealability granted at Docket Nos. 30 and 31 was not deleted or altered in any way by this Court's decision at Docket No. 34. Rather, the Court's denial of a certificate of appealability in its Order at Docket No. 34 was solely in

reference to Respondent's motion for reconsideration. Accordingly, Ground 3 (the reverse-*Batson* claim) has been, and remains, certified for appeal. To the extent that Murray wishes to appeal issues other than Ground 3, he must apply in the Second Circuit Court of Appeals for a certificate of appealability as to those issues.

IT IS THEREFORE ORDERED THAT the Application for a Certificate of Appealability at Docket No. 39 is **DENIED AS MOOT**.

IT IS FURTHER ORDERED THAT the Court declines to grant a Certificate of Appealability as to this Order. 28 U.S.C. § 2253(c); *Banks*, 540 U.S. at 705 ("To obtain a certificate of appealability, a prisoner must 'demonstrat[e] that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.''" (quoting *Miller-El*, 537 U.S. at 327)). Any further request for a Certificate of Appealability must be addressed to the Court of Appeals. *See* FED. R. APP. P. 22(b); 2D CIR. R. 22.1. Ground 3 remains certified for appeal.

Dated: October 28, 2020.

/s/ James K. Singleton, Jr.

JAMES K. SINGLETON, JR.
Senior United States District Judge